



# Iowa General Assembly

## 2007 Committee Briefings

Legislative Services Agency – Legal Services Division

<http://www.legis.state.ia.us/aspx/Committees/Committee.aspx?id=216>

### FREEDOM OF INFORMATION, OPEN MEETINGS, AND PUBLIC RECORDS STUDY COMMITTEE

**Meeting Dates:** [November 9, 2007](#) | [October 19, 2007](#) | [September 6, 2007](#)

**Purpose.** *This compilation of briefings on legislative interim committee meetings and other meetings and topics of interest to the Iowa General Assembly, written by the Legal Services Division staff of the nonpartisan Legislative Services Agency, describes committee activities or topics. The briefings were originally distributed in the Iowa Legislative Interim Calendar and Briefing. Official minutes, reports, and other detailed information concerning the committee or topic addressed by a briefing can be obtained from the committee's Internet page listed above, from the Iowa General Assembly's Internet page at <http://www.legis.state.ia.us>, or from the agency connected with the meeting or topic described.*

### FREEDOM OF INFORMATION, OPEN MEETINGS, AND PUBLIC RECORDS STUDY COMMITTEE

November 9, 2007

**Co-chairperson:** Senator Michael Connolly

**Co-chairperson:** Representative Vicki Lensing

**Overview.** The Freedom of Information, Open Meetings, and Public Records Study Committee is charged with reviewing and recommending changes to Iowa's open meetings (Code ch. 21) and public records (Code ch. 22) laws and the State Records and Archives Act (Code ch. 305). At this third meeting, Professor Arthur Bonfield, a law professor from the University of Iowa with an expertise in open meetings and public records laws, discussed tentative draft language proposals relating to several items requested by the Committee at the Committee's last meeting on October 19, 2007.

**Committee Discussion and Action.** The Committee discussed tentative draft language and requested the Legislative Services Agency Legal Services Division staff to prepare a preliminary bill draft for further Committee consideration and discussion at the Committee's next meeting to include the following:

- **Administrative Enforcement Scheme.** The establishment of an Iowa Public Information Board as an independent regulatory agency to provide an alternative means by which to secure compliance with and enforcement of the requirements of Code chapters 21 and 22. A person may seek enforcement of the provisions of Code chapters 21 or 22 by electing either to file a complaint with the board or to file a lawsuit in court. The board shall have authority to hire employees; issue rules and orders with the force of law; issue declaratory orders; receive, investigate, and prosecute complaints before the board in a contested case proceeding; issue subpoenas; and provide training about the requirements of Chapters 21 and 22. The board shall offer all parties to a dispute the opportunity to resolve the dispute through mediation and settlement.
- **Civil Penalties.** Increasing the current civil penalties for violations of both Code chapters 21 and 22 to not more than \$2,500 but not less than \$1,000.
- **Criminal Sanction.** Repealing a provision in the open records law making knowing violations or attempted violations a simple misdemeanor.
- **Time Limits on Custodian for Responding to Record Requests.** Clarifying that the public be allowed to inspect or copy a public record at the time of the request, but if this is not feasible, the custodian of the record shall notify the requestor not later than five business days from the time of the request when such inspection or copying may take place unless there is good cause for the delay because of unusual circumstances. If the custodian is in doubt about the request, the custodian must make a determination within 10 days of the request, and if access to the record is allowed, it must take place within five business days from the date the custodian makes the determination. A denial must be in writing and must state the reasons for the denial.
- **Undue Invasion of Personal Privacy.** Adding an exemption to the public records law for material about an identified or identifiable person that if disclosed would constitute an unwarranted or undue invasion of personal privacy or that would present a clear and serious danger of facilitating identity theft or other criminal activity in relation to that person.
- **Privacy and Court Records.** Allowing the Iowa Supreme Court to issue rules requiring confidentiality of certain

categories of material in court records consistent with the foregoing exemption relating to undue invasion of personal privacy.

- **Tentative, Preliminary, and Draft Material.** Adding an exemption to the public records law for tentative, preliminary, draft, speculative, or research material prior to final completion and prior to its submission for use in the final recommendation, adoption, or execution of any official policy or action. The Committee specifically asked that all stakeholders review this language and provide feedback to the Committee. The Committee will also review how other states handle this issue.
- **Government Employee Personnel Records.** Clarifying what information in personnel records of governmental bodies shall be public information to include the name and compensation of the individual, the date the individual was employed by the governmental body, the position the individual holds or has held with the governmental body, the individual's qualifications for the position, and any final disciplinary action taken against the individual.
- **Job Applications for Government Employment.** Adding an exemption to the public records law for the identity and qualifications of an applicant for public employment by a governmental body if the applicant requests anonymity in writing and the governmental body determines the anonymity is necessary to induce the applicant to apply for the position. Such information shall be exempt from disclosure until an applicant is a finalist for the public employment position, defined as one of five or fewer applicants under final consideration for the position.
- **Injunctions.** Allowing the district court to issue an injunction prohibiting the disclosure of a public record upon a showing of any one of the following:
  - That disclosure would not be in the public interest because the potential harm to the public interest from disclosure outweighs any potential benefit.
  - That disclosure would substantially and irreparably injure a person because it would invade the personal privacy of the identified subject and the harm is not outweighed by the public interest in disclosure.
  - That the custodian's determination to disclose a record to the public is a violation of law or is arbitrary, capricious, unreasonable, or an abuse of discretion.
- **Final Settlement Agreements.** Specifying that all final binding settlement agreements between an agency or other unit of state or local government shall be available for public inspection and shall include a brief summary indicating the identity of the parties, the nature of the dispute, relevant facts in dispute, and the terms of the settlement.
- **Applicability of Public Records Law to Nongovernmental Bodies.** Clarifying current law that states that a governmental body shall not prevent the examination or copying of a public record by contracting with a nongovernmental body to perform any of its duties or functions by including language that all records in the possession or under the control of a nongovernmental body that are part of the execution or performance of the duties of the nongovernmental body under contract with a governmental body are public records.
- **Consistency in Exemptions.** Adding an exemption to the public records law making records containing information that would permit a governmental body subject to the open meetings law to hold a closed meeting in order to avoid public disclosure of that information.
- **Electronic Meetings.** Adding a provision to the definition of a meeting in the open meetings law to provide that electronic meetings that are preserved by one or more members of a governmental body and sent to a majority of its members or a series of such communications each sent only to a minority of its members but that in the aggregate is sent to a majority of its members shall not be defined as a meeting under the open meetings law if the electronic communications are either posted on the body's Website or bulletin board or copies are made available to the public.
- **Walking Quorums.** Adding a provision to the open meetings law defining a meeting to include the calculated use of a series of communications each between less than a majority of the members of a governmental body that reaches a majority of the members and that is intended to discuss and develop a final agreement of the majority outside of a meeting.
- **Reconvened Meetings Notice.** Creating an exception to the public meeting notice requirement for a meeting that is reconvened within four hours of the start of a recess in a meeting where the time, date, and place of the reconvened meeting is announced in open session and is recorded in the minutes and there is no change in the agenda.
- **Code Chapter 22 Definitions.** Adding definitions to the public records law clarifying the definitions of "record," "government record," "public record," "confidential record," and "optional public record" as follows:
  - "Record" includes information of every kind, nature, and form preserved or stored in any medium, including but not limited to paper, electronic, or film media.
  - "Government record" means all records owned by, created by, in the possession of, or under the control of a state or local government.
  - "Public record" includes all government records which the public has a right to examine and copy and includes all government records that are not designated by law as either confidential records or optional public records.

- "Confidential record" means all government records designated confidential by law.
- "Optional public record" means all government records designated confidential by law unless otherwise ordered by a court, the lawful custodian of the record, or by another person authorized to release the record.

**Next Meeting.** The Committee agreed to meet for a fourth meeting on December 12, 2007. The Committee requested representatives from the Iowa League of Cities, the Iowa Association of School Boards, the Iowa State Association of Counties, the Iowa Hospital Association, the Citizens' Aide/Ombudsman Office, the Iowa Freedom of Information Council, and the Iowa Supreme Court be invited to present any additional proposals to the Committee. The Committee will also review the bill draft prepared by LSA.

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## **FREEDOM OF INFORMATION, OPEN MEETINGS, AND PUBLIC RECORDS STUDY COMMITTEE**

October 19, 2007

**Co-chairperson:** Senator Michael Connolly

**Co-chairperson:** Representative Vicki Lensing

**Overview.** The Freedom of Information, Open Meetings, and Public Records Study Committee is charged with reviewing and recommending changes to Iowa's open meetings (Code ch. 21) and public records (Code ch.22) laws and the State Archives and Records Act (Code ch. 305). During the Committee's first meeting on September 6, 2007, Professor Arthur Bonfield, a law professor from the University of Iowa College of Law, was invited to prepare a policymaking framework based upon a number of open meetings and public records issues raised by various presenters at the first meeting. At this second meeting, Professor Bonfield presented his policymaking framework and the Committee reviewed, discussed, and made policy decisions and drafting recommendations. Professor Bonfield, Ms. Kathleen Richardson, Executive Secretary of the Iowa Freedom of Information Council, and Mr. Michael Guidicessi, an attorney who litigates public records and open meetings, joined in the Committee discussion.

**Drafting Recommendations and Committee Action.** The recommendations approved by the Committee for drafting in the form of proposed legislation for further Committee review are summarized as follows:

- Establish an independent state public information agency authorized to issue advisory opinions, issue rules, receive and investigate complaints, prosecute alleged violations, issue legally binding orders, and ensure adequate training by all public officials.
- Repeal the criminal sanctions relating to public records laws violations.
- Rewrite and consolidate many of the 59 confidential records exemptions in the public records laws to make the exemptions generally applicable instead of agency specific and make these exemptions consistent with the 11 exemptions in the open meetings laws.
- Create a qualified public records exemption relating to the identity and qualifications of an applicant for public employment.
- Clarify the scope of the current exemptions in the public records laws relating to personal information in confidential personnel records.
- Create a qualified personnel records exemption for personal information about identified individuals if the disclosure of such information would constitute an undue invasion of personal privacy.
- Authorize the Iowa Supreme Court to designate by rule the court records and information that are confidential including general policy considerations to guide the court's rulemaking.
- Clarify the types of nongovernment organizations that are subject to the public records laws, which types of information of such organizations that act solely to support a state or local government body are public, and who is the custodian of such information.
- Expand the discretion of courts to issue an injunction to enjoin the public inspection of government information otherwise subject to public inspection.
- Clarify and reaffirm the scope of the public availability of final settlement agreements between an agency or other government body and another entity or person.
- Provide specific timelines within which government information must be made available to the public.
- Clarify the definition of a "meeting" in the open meetings law to consider situations where a series of oral discussions or a series of e-mail exchanges each between less than a quorum of the members of a governmental body subject to the open meetings law occur.
- Establish express limits on the right of a governmental body subject to the open meetings law to recess a meeting

without providing a new notice of the reconvened meeting.

**Next Meeting.** In addition to considering the items to be drafted as proposed legislation, the Committee will consider additional issues raised by various interested parties at the first meeting. The third meeting of the Committee is scheduled for Friday, November 9, 2007, at 9:00 a.m. in Room 103 (Supreme Court Chamber) at the State Capitol.

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## **FREEDOM OF INFORMATION, OPEN MEETINGS, AND PUBLIC RECORDS STUDY COMMITTEE**

September 6, 2007

**Co-chairperson:** Senator Michael Connolly

**Co-chairperson:** Representative Vicki Lensing

**Overview.** The Freedom of Information, Open Meetings, and Public Records Study Committee is charged with reviewing and recommending changes to Iowa's open meetings (Code ch. 21) and public records (Code ch. 22) laws and the State Archives and Records Act (Code ch. 305). The Committee is authorized to meet for three days. The first meeting of the Committee included presentations from Professor Arthur Bonfield, University of Iowa Law School; Mr. William Angrick, Citizens' Aide/Ombudsman; the Honorable Tom Miller, Iowa Attorney General; Mr. Gordon Hendrickson, State Archivist; the Honorable Robert Hutchison, Fifth Judicial District Judge; Ms. Rebecca Colton, Counsel to the Iowa Supreme Court Chief Justice, Judicial Branch; and Mr. Tom Shepherd, Department of Administrative Services (DAS), Information Technology Enterprise. The Committee also heard presentations and received written testimony from various interest groups and other interested persons.

**Professor Arthur Bonfield.** Professor Bonfield highlighted the following issues and concerns about the current statutory language in many provisions of Iowa's open meetings and open records laws as well as the State Archives and Records Act:

- Emphasizing the need for more accurate and precise definitions describing the different types of public access to government information.
- Determining whether very tentative or preliminary ideas or opinions should be subject to mandatory public disclosure.
- Determining the amount of information that must be disclosed in relation to public employment applications as well as the discussions accompanying the processing of those applications.
- Rewriting and consolidating many of the current 59 confidential records exemptions in the public records laws including but not limited to exemptions relating to personnel records, Social Security numbers, and peace officer investigative reports, and including several additional exemptions from public disclosure such as state licensee personal information.
- Reexamining the scope of existing judicial authority to restrain the examination of government information otherwise subject to public inspection.
- Specifying the scope of the discretion of a custodian of a public record to release information otherwise exempt from mandatory public disclosure.
- Adding a provision to the open records law to ensure government records do not lose their disclosure status when the records are transferred to the custody of another official, agency, institution, or person.
- Clarifying the public availability of final settlement agreements between an agency and another entity or person.
- Specifying the timeline within which government information must be made available to the public.
- Reevaluating the definition of a government body, including the definition of advisory bodies, and the definition of a meeting in the open meetings law.
- Strengthening the mechanisms available for enforcement of public information requirements by designating a state official to investigate open meetings and public records complaints or an independent regulatory administrative body to enforce violations of such laws.

**State Ombudsman William Angrick.** Mr. Angrick stated that reports of noncompliance with both public records and open meetings laws have increased with "frequency and audacity" despite increased training efforts by organizations such as the Iowa League of Cities, the Iowa State Association of Counties, and the Iowa Freedom of Information Council, and the creation of a new position in the Ombudsman's Office to respond to public records and open meetings complaints. He discussed the type of information that should be made available to the public concerning applications for government employment, the need to address the practice of "walking quorums" by members of a governmental body where less than a majority of members rotate in and out of a meeting to avoid the requirements of the public meetings law, and the need to specify the definition and nature of a public record under both the public records and the state records and archives

laws. Mr. Angrick also discussed the need to review open records issues relating to investigative reports prepared by law enforcement.

**Attorney General Tom Miller.** Mr. Miller expressed the need for legislation that clearly prohibits walking quorums and e-mail meetings, two practices that are frequently used to circumvent the requirements of the open meetings law. He also stated his commitment to working toward public accessibility of settlement agreements. Mr. Miller stated he would be willing to consider prosecuting violations of Iowa's open meetings and open records laws at the local government level. Currently, such prosecutions are left to the discretion of the local county attorneys. Mr. Miller stated he would need additional funding to cover the increased expenses associated with such prosecutions.

**State Archivist Gordon Hendrickson.** Mr. Hendrickson noted that the state records and archives law provides the methodology for determining the length of time state records should be retained and at what point it is appropriate to transfer state government records from agency offices to the State Records Center or to dispose of such records either by destruction or transfer to the State Archives. He emphasized the need for consistency in application of confidentiality provisions in open records laws for both federal and state government bodies. He made recommendations relating to the need to determine the appropriate length of time individual records series should be kept confidential, making a careful review of confidentiality provisions in other jurisdictions outside of Iowa to assure consistency in the application of the laws, including an executive privilege definition, and clarifying the term "lawful custodian," the government body currently in physical possession of the government record.

**Judicial Branch.** Judge Hutchison and Ms. Colton provided information about the proposed electronic data management system (EDMS) the judicial branch will be implementing to enable the use of electronic filing and the use of and access to electronic files in the Iowa court system. The Supreme Court's goal is to implement electronic filing in all courts statewide in five years. Ms. Colton noted that although a paperless court system will allow more efficient court operations and public access, there are concerns about information security and sensitive and personal information contained in court documents. Proposed rules of practice and procedure have been developed to address implementation of this electronic filing and recordkeeping system and include personal protection privacy measures to assist in protecting certain information from widespread dissemination.

Judge Hutchison delineated three levels of access through the new system by noncourt personnel to court documents and files not deemed confidential: general public access for nonconfidential files or documents; registered user access to view and download nonconfidential files or documents; and registered filer access to file, view, and download all documents in cases in which the registered filer is a party to the case. There will no cost to view a nonconfidential file or document, but registered users and registered filers will pay a fee as determined by the Technology Governance Board.

**Mr. Tom Shepherd, DAS.** Mr. Shepherd's presentation included recommendations relating to open meetings, public records, and state records and archives laws. Mr. Shepherd emphasized the need for government bodies to maintain the distinction between public records and value-added services when determining fees to be charged for access to electronic public records and data processing software. He also discussed the need to promote efficient and effective access to public records and recommended exempting extra copies of documents maintained by government bodies in Iowa solely for convenience or reference purposes from the definition of public record.

**Other Presentations.** The following persons representing various interest groups made brief presentations concerning their perspectives and proposed revisions relating to Iowa's open meetings and public records laws:

- Ms. Kathleen Richardson, Executive Secretary, Iowa Freedom of Information Council. Ms. Richardson also addressed the Committee on behalf of the Iowa Newspaper Association and the Iowa Broadcasters Association.
- Mr. David Vestal, General Counsel, Iowa State Association of Counties.
- Mr. Terry Timmons, Associate General Counsel, Iowa League of Cities.
- Ms. Mary Gannon, Attorney, Iowa Association of School Boards.
- Mr. Marty Ryan, Legislative Director, Iowa Civil Liberties Union.
- Mr. Dennis Allen, Vice President, Iowa Genealogical Society.
- Ms. Lauris Olson, an interested citizen and independent newspaper publisher.
- Ms. Tammie Picton, an interested citizen from Riverdale, Iowa.

**Next Meeting.** The next meeting of the Committee is scheduled for October 19, 2007, in the Supreme Court Chamber at the State Capitol at 9:00 a.m.

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